

MF 96-10

Tax Type: MOTOR FUEL TAX

Issue: Audit Methodologies and/or Other Computational Issues

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	Docket #
)	
v.)	Permit #
)	
TAXPAYER)	
)	Karl W. Betz
)	Administrative Law Judge
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

SYNOPSIS

This cause came on to be heard following an audit performed by the Illinois Department of Revenue (hereinafter the "Department") upon TAXPAYER (hereinafter "taxpayer").

The Department performed a Motor Fuel Use Tax audit upon the taxpayer for the period of July 1, 1992 through December 31, 1993. Upon completion of the audit, the taxpayer paid the liability on the tax effect of some everywhere and Illinois mileage changes determined by the auditor to be appropriate adjustments to the filed quarterly fuel tax returns (IDR-280's). These adjustments were based on the auditor's comparison of odometer readings versus the state by state mileages off the driver trip reports used by taxpayer's tax return preparer.

While reviewing taxpayer's filing history, the auditor did discover that Department records showed that one quarterly return was not submitted by taxpayer. Accordingly, the auditor assessed the open, unfiled return period on the basis of it being delinquent. Because taxpayer contested this determination of delinquency, Notice of Tax Liability Number XXXXX was issued for tax of

\$2,612.00, plus interest of \$2,703.24 and penalty of \$784.00 for a total liability of \$6,099.24.

After taxpayer made a timely protest of the NTL, a pre-hearing status conference was scheduled by the Department in this matter. Before the conference, taxpayer submitted a letter dated April 29, 1996, in which it stated it waived its right to a formal hearing and requested a determination by the administrative law judge based upon its statement of its position in the letter and materials already submitted. The convening of a formal hearing having been waived by taxpayer, no witnesses were called to testify and I thus write this recommendation based upon any documents in the record submitted by taxpayer and the Department's *prima facie* case consisting of the corrected return, audit file and NTL.

After reviewing this matter, I recommend the issue be resolved in favor of the Department.

FINDINGS OF FACT

1. Taxpayer conducts business operations in Illinois as a motor carrier by hauling dry goods. (Dept. Audit File)
2. The taxpayer incurs Illinois Motor Fuel Use Tax Liability because it hauls loads for hire in commercial motor vehicles upon the highways of Illinois. (Dept. Audit File)
3. Taxpayer's corporate headquarters is Munster, Indiana. (Dept. Audit File)
4. Pursuant to statutory authority, the Department auditor did cause to be issued an Audit Correction and/or Determination of Tax Due and this corrected return served as the basis for the Notice of Tax Liability. (Dept. Audit File)
5. Taxpayer did not submit any documentary evidence to show that it had filed and paid its quarterly return for the second quarter of 1989. (Dept. File)

CONCLUSIONS OF LAW

Section 13a.3 of the Motor Fuel Tax Law requires every motor carrier who operates in Illinois to file a quarterly fuel tax report, or return, with the Department, 35 ILCS 505/13a.3.

It is well settled under Illinois law that once the auditor's corrected return is produced, or entered into evidence at a formal Administrative Hearing, the *prima facie* case of the Department is established and the burden then shifts to taxpayer to establish by competent documentary evidence through its books and records that the corrected return prepared by the Department is not correct. That is, there is a statutory burden placed upon the taxpayer to establish by competent documentary evidence that the adjustments performed by the Department are incorrect, and until the taxpayer provides such proof, the corrected returns are presumed to be legally correct. Illinois Cereal Mills, Inc. v. Department of Revenue, 99 Ill.2d. 9 (1983), Copilevitz v. Department of Revenue, 41 Ill.2d. 154 (1968)

Taxpayer argues it is possible for the Department to make a mistake. While a mistake can be possible, mere conjecture does not comply with the above referenced documentary evidence standard, and taxpayer has submitted no return copy, cancelled check or other document from its books and records to show it filed the quarterly return for the second quarter of 1989.

Relative to taxpayer's argument about the change in Public Act 83-1416 only applying to sales tax, I note that the statute of limitations provision in the delinquency section of the Retailers' Occupation Tax Act (35 ILCS 120/5, formerly Ill. Rev. Stat., ch. 120, par. 444) is incorporated by reference into the Motor Fuel Tax Law, 35 ILCS 505/21.

In this contested case, taxpayer waived its right to present sworn testimony at hearing, and prior to such waiver it did not provide verifiable source documents to show that it filed the contested quarterly fuel tax return. In the absence of such records, I am required to find in favor of the Department.

RECOMMENDATION

Based upon my findings and conclusions as stated above, I recommend the Department finalize NTL No. XXXXX and issue a Final Assessment.

Karl W. Betz
Administrative Law Judge